

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jayvee Rhoda	Team: Squad #10	CCRB Case #: 201602538	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/23/2016 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 9/23/2017	EO SOL 9/23/2017	
Date/Time CV Reported Fri, 03/25/2016 12:05 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 03/25/2016 12:05 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Edward McBride	01256	896139	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Donald McNulty	669	947245	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.DT2 Edward McBride	Abuse: Detective Edward McBride frisked § 87(2)(b)	§ 87(2)(b)
B.DT2 Edward McBride	Abuse: Detective Edward McBride searched § 87(2)(b)	§ 87(2)(b)
C.DT2 Edward McBride	Abuse: Detective Edward McBride searched § 87(2)(b) in Staten Island.	§ 87(2)(b)
D.DT2 Edward McBride	Abuse: Detective Edward McBride threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 23, 2016, at approximately 4:00 p.m., § 87(2)(b) and § 87(2)(b) were working at a § 87(2)(b), in Staten Island. Det. Edward McBride and Det.

Donald McNulty from the Intelligence Bureau entered the store to investigate § 87(2)(e)

When the officers arrived at the store, they discovered that § 87(2)(b) was not present. Det. McNulty walked behind the counter and allegedly frisked and searched § 87(2)(b) (**Allegations A and B**). Det. McNulty allegedly searched the shelves and papers behind the counter to find evidence of untaxed cigarette sales (**Allegation C**). Det. McNulty uncovered several NYS Benefits cards on the counter during his search and allegedly threatened to arrest § 87(2)(b) for being in possession of the cards (**Allegation D**). Det. McNulty vouchered the Benefits cards but did not take anything else from the store. No one was arrested or summonsed. § 87(2)(g)

This case has video evidence, SnagIt copies of which have been placed below. Please note that the videos can be found at Board Review 8, 13, and 14, and the transcription of these videos can be found at Board Review 9. The video footage captures the alleged frisk of § 87(2)(b) and the alleged search of the area behind the store counter.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation.
- On May 24, 2016, the NYC Comptroller's Office confirmed that a Notice of Claim was not filed in connection with this incident (See Board Review 1).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer Histories

- This is § 87(2)(b)'s, § 87(2)(b)'s and § 87(2)(b)'s first CCRB complaint (See Board Review 4).
- Det. McBride has been a member of the service for 26 years and has been the subject in 17 prior CCRB complaints filed against him involving 32 allegations. Four of the allegations were substantiated. In case number 9704517, threat of force, frisk and/or search, and retaliatory arrest allegations were substantiated and the CCRB recommended charges. In case number 9902423, a force- gun as club allegation was substantiated and the Board recommended charges. The NYPD dispositions were not available in the CTS.

Attempts to Interview Civilians

It was determined after speaking with § 87(2)(b) that he did not witness this incident.

Findings and Recommendations

Explanation of Subject Officer Identification

Det. McBride and Det. McNulty acknowledged interacting with § 87(2)(b) and § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(g)

Recommendations

Allegation A- Abuse of Authority: Detective Edward McBride frisked § 87(2)(b)

Allegation B- Abuse of Authority: Detective Edward McBride searched § 87(2)(b)

It is not in dispute that Det. McBride frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b) testified that he and § 87(2)(b) were the only two employees working at the store when the incident occurred. Det. McBride and Det. McNulty asked about the whereabouts of the store owner, § 87(2)(b) and § 87(2)(b) replied that § 87(2)(b) was not at the store. The officers did not elaborate further as to the purpose of their visit. Det. McBride asked § 87(2)(b) to use his phone to call § 87(2)(b) and § 87(2)(b) complied. Det. McBride took the phone and briefly spoke with § 87(2)(b) about a dispute between § 87(2)(b) and the landlord of the building. § 87(2)(b) was not aware of any such dispute. § 87(2)(b)'s lawyer then called § 87(2)(b)'s phone and spoke with Det. McBride, but § 87(2)(b) did not know what they spoke about. Det. McBride announced that the store was closed and ordered all the customers inside to leave. Det. McBride walked behind the counter, where § 87(2)(b) was standing, and said, "I have to search you," to § 87(2)(b). § 87(2)(b) did not give Det. McBride permission to search him. Det. McBride allegedly patted his hands over § 87(2)(b)'s clothing, specifically over his pants pockets and thighs. Det. McBride allegedly placed his hand inside § 87(2)(b)'s back pants pocket and removed his wallet. Det. McBride did not search any other pockets. § 87(2)(b) did not have any other items in his pants pockets besides his wallet. Det. McBride did not search any other individuals in the store. Det. McBride took § 87(2)(b)'s ID out of his wallet, placed the ID on the store counter, and took a picture of it with his phone. § 87(2)(b) stated that there were no box cutters on the counter or in his pockets at the time of the incident (See Board Review 5 and 7).

§ 87(2)(b) did not allege that § 87(2)(b) was frisked or searched in his CCRB testimony (See Board Review 6 and 7).

Video footage obtained from the store shows Det. McBride behind the counter, speaking on a cell phone. § 87(2)(b) can also be seen behind the counter and lowering his body underneath the counter momentarily. The video does not capture what § 87(2)(b) is doing under the counter. Shortly afterwards, Det. McBride approaches § 87(2)(b) and appears to run his hands over § 87(2)(b)'s waistband and pants area. The video does not show whether Det. McBride placed either of his hands in any of § 87(2)(b)'s pockets (See Board Review 8 and 9).



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Det. McBride testified that he visited the store in regards to § 87(2)(e)

Det. McBride was the investigator assigned to the case and his intent was to interview § 87(2)(b) and investigate the allegations against him. Det. McBride asked to speak with § 87(2)(b) but § 87(2)(b) and § 87(2)(b) informed him that § 87(2)(b) was not in the store. Det. McBride did not inform either § 87(2)(b) or § 87(2)(b) as to the purpose of the officers' visit, because it was confidential. Det. McBride asked the customers to leave the store so that he could safely conduct his police business. § 87(2)(e)

Det. McBride asked § 87(2)(b) whether he could come behind the counter and § 87(2)(b) gave consent for him to do so. Det. McBride asked § 87(2)(b) to show him the store's tax license and § 87(2)(b) made a quick reaching gesture underneath the counter. Det. McBride asked § 87(2)(b) what he was reaching for and § 87(2)(b) replied he was retrieving the tax license, which was under the counter. Det. McBride was concerned for his safety because they were in a confined space and he could not see the area where § 87(2)(b) was reaching towards because his body was turned away from Det. McBride. Det. McBride also observed box cutters and razors on the counter. In Det. McBride's experience, people who work in retail often have box cutters on their person. Det. McBride asked § 87(2)(b) whether he could pat him down to see whether he had a box cutter. § 87(2)(b) verbally consented to a pat down and Det. McBride patted his hands around § 87(2)(b)'s waist and pockets. Det. McBride never reached inside any of § 87(2)(b)'s pockets and only patted over § 87(2)(b)'s clothing (See Board Review 10).

Det. McNulty's testimony was generally consistent with Det. McBride's testimony. However, Det. McNulty did not see Det. McBride frisk § 87(2)(b) or place his hands inside his pockets. Det. McNulty did not see any physical contact between Det. McBride and § 87(2)(b) (See Board Review 11).

Patrol Guide Procedure 212-11 states that an officer may frisk an individual if the officer reasonably suspects that he or others are in danger of physical injury (See Board Review 12).

Det. McBride stated that he wanted to frisk § 87(2)(b) to determine whether he had a weapon, specifically a box cutter, since there were box cutters and razors on the counter, and it is common for people working in retail to have box cutters. Det. McBride also stated that he obtained permission from § 87(2)(b) to frisk him. § 87(2)(g)

§ 87(2)(g)

Allegation C- Abuse of Authority: Detective Edward McBride searched § 87(2)(b), in Staten Island.

It is not in dispute that Det. McBride searched the items and area behind the counter in the store.

§ 87(2)(g)

§ 87(2)(b) testified that Det. McBride went behind the counter and searched the tobacco products, money, and store paperwork. § 87(2)(b) stated that there were cigarettes, cigars, and cigarillos for sale behind the counter. § 87(2)(b) denied selling any loose cigarettes, untaxed cigarettes, or flavored tobacco. § 87(2)(b) asked Det. McBride whether he had a warrant, but Det. McBride told § 87(2)(b) not to worry about a warrant. § 87(2)(b) never gave Det. McBride consent to search behind the counter. § 87(2)(b) never asked Det. McBride to stop searching behind the counter. Det. McBride discovered a customer's benefits card on the counter. § 87(2)(b) explained to Det. McBride that sometimes his customers accidentally leave their cards on the counter (See Board Review 6 and 7).

§ 87(2)(b) testified that he told Det. McBride that he was not allowed to search the store because he did not have a warrant. Det. McBride told § 87(2)(b) that he could do whatever he wanted to do and search the store without a warrant. Det. McBride searched the shelves behind the counter and specifically searched the candy, cigars, cigarettes, and medicine products on display behind the counter. Det. McBride also opened and searched an unlocked safety box that was on the floor, which contained paperwork, including bills and receipts. Det. McBride did not explain what he was searching for behind the counter. There were benefits cards on the counter that customers had accidentally left there. Det. McBride took pictures of the benefits cards. Det. McNulty did not say anything during the incident and he was just standing around when Det. McBride searched the area behind the counter. Det. McBride did not explain what he was searching for. § 87(2)(b) denied selling any untaxed tobacco products and stated that the store tax license was displayed on a window at the counter (See Board Review 5 and 7).

Video obtained from the store depicts Det. McBride searching items on the shelves behind the counter and parts below the counter that are not visible on camera (See Board Review 13, 14, and 9).



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Det. McBride testified that when he went behind the counter, he observed several violations of NYS tax law, specifically loose cigarettes in a Newport box next to the cash register and flavored

tobacco on the shelves behind the counter. § 87(2)(e)

§ 87(2)(b). Det. McBride stated that he asked § 87(2)(b) for permission to come behind the counter and search the area behind the counter, and § 87(2)(b) gave Det. McBride consent to do so. Det. McBride stated that NYS tax law allows officers to conduct administrative searches of stores that sell products with tax stamps. Det. McBride discovered four NYS Benefits cards on the counter not belonging to either § 87(2)(b) or § 87(2)(b). Det. McBride seized the cards and vouchered them. Det. McBride stated that the items that he sorted through on the shelves behind the counter were the flavored tobacco products. Det. McBride confirmed that the tobacco products did not have tax stamps and there were loose cigarettes behind the counter, which was illegal. Det. McBride denied opening any compartments in the area below the counter. Det. McBride did not seize any tobacco products from the store. Det. McBride stated that he did not arrest or summons anyone from the store. § 87(2)(e)

Det. McNulty confirmed that Det. McBride searched the area behind the counter, but was unable to provide a detailed description of the search or what was recovered because he was not the officer assigned to the investigation, he was only there as backup (See Board Review 11).

In People v. Pace, 101 A.D.2d 336; 475 N.Y.S.2d 443; 1984 N.Y. App. Div. LEXIS 17821, the court established that section 436 of the New York City Charter authorizes the police department to conduct warrantless administrative inspections of certain enterprises. However, the court held that when the purpose of a search is to gather evidence of a crime for criminal prosecution and “not undertaken as a routine regulatory inspection, the administrative search rationale is simply inapplicable.” Furthermore, New York Tax Law Section 474 articulates that only the commissioner of taxation and finance or his duly authorized representatives are authorized to perform administrative searches to ensure compliance with the state tax code (See Board Review 15, 16, and 18).

§ 87(2)(g), § 87(2)(e)

Allegation D- Abuse of Authority: Detective Edward McBride threatened to arrest § 87(2)(b)

It is not in dispute that Det. McBride threatened to arrest § 87(2)(b) § 87(2)(g)

§ 87(2)(b) testified that when Det. McBride searched the area behind the counter, he discovered a customer's benefits card on the counter. § 87(2)(b) explained to Det. McBride that customers sometimes accidentally leave their benefits cards on the counter and retrieve them later. Det.

McBride allegedly told § 87(2)(b) that he could arrest him for being in possession of the benefits card (See Board Review 6 and 7).

§ 87(2)(b) did not corroborate § 87(2)(b)'s threat of arrest allegation (See Board Review 5 and 7).

Det. McBride testified that he observed several violations of the NYS taxation law, specifically loose cigarettes in a Newport box next to the cash register and flavored tobacco products on shelves behind the counter, and the NYS taxation license was not prominently displayed behind the window. Det. McBride stated that he informed § 87(2)(b) that he could be arrested or summonsed for the observed violations (See Board Review 10).

Det. McNulty did not hear the alleged threat of arrest (See Board Review 11).

The sale of flavored tobacco is prohibited by law in New York City. According to Section 28-02 of the NYC Rules, only tobacco bars and tobacco wholesalers are permitted to sell flavored tobacco products (See Board Review 17).

§ 87(2)(g)

Squad: 10

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date